

NOTICE OF INTENT

Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Risk Evaluation/Corrective Action Program (RECAP) - Revision 2
(LAC 33:I.1305 and 1307 and the RECAP document) (OS044)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.1305 and 1307 and the RECAP document (Log #OS044).

The proposed rule will adopt by reference the Risk Evaluation/Corrective Action Program (RECAP) regulations that are being revised as part of this rulemaking package. The revisions will provide clarification, reorganization, and corrections to text, tables, figures, and appendices of the RECAP regulations that were promulgated in December 1998 and revised in June 2000. Clarifications of text enhance the reader's understanding of the content of the regulations. Correction to errors in the regulations and reorganization of text will improve the RECAP regulations and help the regulated community in understanding of the regulations. Some of these changes include: text omission due to redundancy and text rearranged or added for clarification purposes; soil intervals redefined; conveyance notification requirements clarified; additional guidance on Area of Investigation (AOI) identification and estimation of the AOI constituent concentration; additional guidance on identification of groundwater Point of Compliance (POC) and Point of Exposure (POE); change in procedures for establishing a site-specific background concentration; new section on identification of toxicity values and demonstrating compliance with Screening Standards (SS) and RECAP Standards (RS); added land owner notification requirements; added air RS under Management Option 2 (MO-2) and Management Option 3 (MO-3) for comparison to air data; revision of SS and MO-1 RS based on updated toxicity values and default exposure parameters; added Table 4 containing default RS for Groundwater - enclosed space (GWes), Soil - enclosed space (Soiles), Groundwater - air (GWair) and Air; revised figures to be consistent with text; added guidance on indoor air sampling; additional guidance on groundwater monitoring requirements; addition of Texas Natural Resource Conservation Commission (TNRCC) Method 1005 for Total Petroleum Hydrocarbon- Gasoline Range Organics (TPH-GRO), Total Petroleum Hydrocarbon- Diesel Range Organics (TPH-DRO), and Total Petroleum Hydrocarbon- Oil Range Organics (TPH-ORO); addition of TNRCC Method 1006 for TPH fractions; additional guidance on additivity for TPH; added list of target organs for TPH; added table of critical effects/target organs for the Constituent-of-Concern (COC) listed in Tables 1-3; added Management Option 1 (MO-1), Management Option 2 (MO-2), and Management Option 3 (MO-3) guidance on development and application of RS; and added guidance for development of RS for air, sediment, surface water, and biota. The RECAP revisions will help ensure that a consistent method based on sound scientific principles is used for addressing site contamination and will continue to serve as a standard tool to assess impacts to soil, ground water, surface water, and air. The basis and rationale for this rule are to clarify,

reorganize, and correct the current RECAP regulations. The RECAP revisions will serve to establish uniformity for submitters in the program to minimize the time and money necessary to identify corrective action levels for constituents of concern at a contaminated site. This should encourage voluntary and expeditious remediation.

This proposed rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on January 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by OS044. Such comments must be received no later than February 20, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to FAX (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of OS044.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

Title 33
ENVIRONMENTAL QUALITY
Part I. Office of the Secretary
Subpart 1. Departmental Administrative Procedures

Chapter 13. Risk Evaluation/Corrective Action Program

§1305. Applicability

A. – B. ...

C. This Chapter shall not apply to unauthorized discharges that:
1. do not require notification under LAC 33:I.Chapter 39;
2. are remediated within 30 days after the discharger becomes aware of the
discharge; and
3. are remediated in a manner that will ensure protection of human health and
the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1264 (June 2000), LR 29:**.

§1307. Adoption by Reference

A. The document entitled, “Louisiana Department of Environmental Quality Risk Evaluation/Corrective Action Program (RECAP),” dated ~~June 20, 2000~~ [Final Promulgation Date to be entered], is hereby adopted and incorporated herein in its entirety. The RECAP document is available for purchase or inspection from 8 a.m. until 4:30 p.m., Monday through Friday, from the department’s Office of Environmental Assessment, Environmental Planning Division. For RECAP document availability at other locations, contact the department’s Environmental Planning Division. The RECAP document may also be reviewed on the Internet at www.deq.state.la.us.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998), amended by the Office of Environmental Assistance, Environmental Planning Division, LR 26:1264 (June 2000), LR 26:2441 (November 2000), LR 29:**.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**LOG #: OS044

Person

Preparing

Statement: John Halk Dept.: Environmental Quality
Phone: 225-765-0487 Office: Environmental Assessment

Return

Address: P.O. Box 82178 Title: Risk Evaluation/Corrective Action
Program (RECAP) Revision 2
(LAC 33:I.1305, 1307, and RECAP)
Baton Rouge, La 70884-2178

Date Rule

Takes Effect: Upon Promulgation**SUMMARY**

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. **THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Existing staff and facilities will be used in the implementation of the Risk Evaluation/Corrective Action Program (RECAP) Revision Package rule. No significant costs or savings are anticipated with the promulgation of the RECAP revisions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No net increase or decrease in revenues is expected with the promulgation of this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Implementation of the proposed Risk Evaluation/Corrective Action Program (RECAP) revisions would result in some reduction in the costs of remediating contaminated sites to a protective level when compared to the present RECAP regulation. Clarifications, additional guidance, and corrections to text, figures, tables, and appendices to the document will benefit the environmental service providers in reducing overall review time and preparation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is expected that no significant increase in needed environmental services will correspond with the revisions in this rule. Since RECAP is an established rule, competition in the environmental service

sectors is positive and energetic because all parties are pursuing remedial actions under the same set of standards. Amendments to RECAP should not impact present competition and employment.

Signature of Agency Head or Designee

LEGISLATIVE FISCAL OFFICER OR DESIGNEE

James H. Brent, Ph. D., Assistant Secretary

Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

LFO 10/05/92

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

The proposed rule will adopt by reference the Risk Evaluation/Corrective Action Program (RECAP) regulations that are being revised as part of this rulemaking package. The revisions will provide clarification, reorganization, and corrections to text, tables, figures, and appendices of the RECAP regulations that were promulgated in December 1998 and revised in June 2000. Clarifications of text enhance the reader's understanding of the content of the regulations. Correction to errors in the regulations and reorganization of text will improve the RECAP regulations and help the regulated community in understanding of the regulations. Some of these changes include: text omission due to redundancy and text rearranged or added for clarification purposes; soil intervals redefined; conveyance notification requirements clarified; additional guidance on Area of Investigation (AOI) identification and estimation of the AOI constituent concentration; additional guidance on identification of groundwater Point of Compliance (POC) and Point of Exposure (POE); change in procedures for establishing a site-specific background concentration; new section on identification of toxicity values and demonstrating compliance with Screening Standards (SS) and RECAP Standards (RS); added land owner notification requirements; added air RS under Management Option 2 (MO-2) and Management Option 3 (MO-3) for comparison to air data; revision of SS and MO-1 RS based on updated toxicity values and default exposure parameters; added Table 4 containing default RS for Groundwater - enclosed space (GWes), Soil - enclosed space (Soiles), Groundwater - air (GWair) and Air; revised figures to be consistent with text; added guidance on indoor air sampling; additional guidance on groundwater monitoring requirements; addition of Texas Natural Resource Conservation Commission (TNRCC) Method 1005 for Total Petroleum Hydrocarbon- Gasoline Range Organics (TPH-GRO), Total Petroleum Hydrocarbon- Diesel Range Organics (TPH-DRO), and Total Petroleum Hydrocarbon- Oil Range Organics (TPH-ORO); addition of TNRCC Method 1006 for TPH fractions; additional guidance on additivity for TPH; added list of target organs for TPH; added table of critical effects/target organs for the Constituent-of-Concern (COC) listed in Tables 1-3; added Management Option 1 (MO-1), Management Option 2 (MO-2), and Management Option 3 (MO-3) guidance on development and application of RS; and added guidance for development of RS for air, sediment, surface water, and biota.

The RECAP revisions will help ensure that a consistent method based on sound scientific principles is used for addressing site contamination and will continue to serve as a standard tool to assess impacts to soil, ground water, surface water, and air.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

Act 1092 (R.S. 30:2272.1 and 2285) of the 1995 Regular Session, known as the Voluntary Investigation and Remedial Action (VIRA) Act, required the Department to promulgate minimum remediation standards to serve as the basis of approving voluntary remedial action plans.

The RECAP revisions will serve to establish uniformity for submitters in the program to minimize the time and money necessary to identify corrective action levels for constituents of concern at a contaminated site. This should encourage voluntary and expeditious remediation.

This rule will ensure that consistent procedures established by promulgation are used throughout the Department for the assessment, remediation, and/or closure of applicable sites in Louisiana.

C. Compliance with Act II of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

The proposed rule change will not result in any increase in expenditure of funds.

- 2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ___ Yes. If yes, attach documentation.

(b) ___ No. If no, provide justification as to why this rule change should be published at this time.

This is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT**WORKSHEET****I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED**

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 02-03	FY 03-04	FY 04-05
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
<u>EQUIPMENT</u>			
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR.	-0-	-0-	-0-
POSITIONS(#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

No significant increase or decrease in costs is anticipated with the promulgation of the RECAP revisions.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 02-03	FY 03-04	FY 04-05
STATE GENERAL FUND			
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED			
FEDERAL FUNDS			
<u>OTHER (Specify)</u>			
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The Agency currently has sufficient funds to implement these revisions.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

Upon promulgation of the RECAP Revisions, the impacts on local government units are anticipated to be the same as the existing RECAP rule.

In later years, tax revenues will likely increase as remedial actions are performed throughout the state and property and sales taxes are collected on previously idled properties that have been brought back into commerce.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

Upon promulgation, no significant impact on sources of funding of the local government units is anticipated as a result of this proposed rule.

In later years, tax revenues will likely increase as remedial actions are performed throughout the state and property and sales taxes are collected on previously idled properties.

Any cost savings realized by local government units in addressing their sites under RECAP would, of course, have a positive increase in their sources of funding.

FISCAL AND ECONOMIC IMPACT STATEMENT**WORKSHEET****II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS**

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 02-03	FY 03-04	FY 04-05
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STATE GENERAL FUND

AGENCY SELF-GENERATED

RESTRICTED FUNDS*

FEDERAL FUNDS

LOCAL FUNDS

<u>TOTAL</u>	-0-	-0-	-0-
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*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No significant increase or decrease in revenues is expected with promulgation of this proposed rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Implementation of the proposed Risk Evaluation/Corrective Action Program (RECAP) Revisions rule will affect all submitters of corrective action plans to the Department. The affected groups will include solid waste facilities, hazardous waste facilities, inactive and/or abandoned sites, underground storage tank sites, impacted residential, commercial, and industrial real estate, environmental remediation/engineering, and consulting firms.

Most of the changes made in RECAP by the proposed RECAP Revisions are clarifications and reorganization of text and additional guidance and/or clarifications in figures, tables, and appendices. These changes will improve the document overall and serve to reduce time spent by the submitter for interpretation. Additional guidance and information in the various RECAP sections will improve document review and turn-around.

Many changes proposed in the RECAP Revisions will reduce the overall documentation and workload burden of the submitter. An additional Table has been added to the RECAP document that contains default RS for Groundwater-enclosed space (GW_{es}) and Groundwater-air (GW_{air}) RS standards. Additional guidance has been given in the Appendices on addressing additivity for TPH and identifying critical effects/target organs for the COC listed in Tables 1-3. Adding two TPH sampling methods will aid the submitter in completing necessary sampling analyses. All of these changes will aid the submitter in completing the necessary RECAP submittals.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Groups such as environmental contractors and consultants should realize a positive economic benefit from this rule. Clarification and correction of the document should result in submittals that will require less Department review time, less private consulting fees, and quicker turn-around.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The rule, a revision to the RECAP regulation, will have no negative impact on competition and employment within the state. Similar expectations with respect to competition and employment in the public and private sectors are anticipated. Jobs are expected to be generated in the industrial and environmental service sectors as facilities continue to comply with the rule. Growth will occur in the private sector as remedial actions are completed on sites and those sites returned to active use. An expected increase in the volume of site investigations, risk evaluations, and site monitoring done under the proposed rule will have a corresponding increase in the employment of environmental product and service firms. Louisiana is now one of many states that has an established risk-based corrective action program combined with a voluntary remediation program. If Louisiana promulgates this rule and environmental service providers become experienced in working with this rule, the service providers' prospects for employment outside the state are better because they will have gained the knowledge necessary to compete with other providers for that work. Decreased remedial costs may also benefit Louisiana businesses competing with other states by freeing capital and resources for reinvestment and facility improvements.